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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,857	02/11/2004	William Gatling	4731-003/COD	3892
27572	7590	01/09/2006	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303			JIANG, CHEN WEN	
			ART UNIT	PAPER NUMBER
			3744	

DATE MAILED: 01/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/776,857

Applicant(s)

GATLING ET AL.

Examiner

Chen-Wen Jiang

Art Unit

3744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 20-24 and 31-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 31-36 is/are allowed.
- 6) ☒ Claim(s) 20-24 and 37-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Arguments*

1. The amendments and arguments presented by the applicant have been duly noted. However, an update search and further review of the prior art of record has prompted the presentation of new rejections presented below. In view of such, the previous rejections in the first office action have been withdrawn.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Claims 20-23 and 37-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilkinson (GB 2235780).

Wilkinson discloses a temperature monitoring apparatus for monitoring the temperature of items retained, stored, or displayed in refrigerated cabinets or hot cabinets. The apparatus comprises a simulator in a casing, temperature sensing means adapted to sense the temperature

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of the simulator and a micro-processing means to allow the simulated characteristics to be modified in accordance with the product temperature. The simulator comprises material whose characteristics under temperature change are similar to a specific product over a specific temperature change. The apparatus may include a transmitter and receiver, in the form of a radio pager, to a remote location. However, Wilkinson does not disclose attachment. Upon a close review of applicant's specification, it appears that the claimed mountings do not have any criticality and/or lead to any new and unexpected results. Applicant does not specify the deficiencies of other mountings used in the prior art. Therefore, it would have been obvious to one of ordinary skill in the art to have selected the claimed mountings for attaching the apparatus to the display housing since these particular mountings provide no better or provided improved performance over which is commonplace in the prior art. The applicant places magnet or slide mount is mere matter of engineering design choice which, in absence of a statement regarding criticality or new and unexpected results, would have been an obvious choice of different mountings to place the apparatus.

4. Claims 20,22,23 and 37-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilkinson (GB 2235780) in view of Brown et al. (U.S. Patent Number 3,343,151) and further in view of Hamerski et al. (U.S. Patent Number 5,507,464).

Wilkinson discloses a temperature monitoring apparatus for monitoring the temperature of items retained, stored, or displayed in refrigerated cabinets or hot cabinets. The apparatus comprises a simulator in a casing, temperature sensing means adapted to sense the temperature of the simulator and a micro-processing means to allow the simulated characteristics to be modified in accordance with the product temperature. The simulator comprises material whose

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characteristics under temperature change are similar to a specific product over a specific temperature change. The apparatus may include a transmitter and receiver, in the form of a radio pager, to a remote location. However, Wilkinson does not disclose attachment. The applicant places magnet or slide mount is mere matter of engineering design choice. Brown et al. disclose a sensor unit 17 including a housing 18 carrying the simulator 10 with bracket mounting on the wall in the same field of endeavor for the purpose of monitoring food temperature. Brown et al. also disclose the sensor unit can be mounted in any suitable manner. Hamerski et al. disclose the mounting mechanisms include sliding engagement, catches, magnets and suction cups. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus of Wilkinson with magnet and sliding mountings so as to substitute equivalents known for the same purpose.

5. Claims 24 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilkinson as applied to claims 20 and 37 above, and further in view of Heagle et al. (U.S. Patent Number) or Kail (U.S. Patent Number 5,959,529).

In regard to claims, Heagle et al. and Kail et al. disclose temperature sensor with transceiver for remote control.

### ***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 20-24 and 37-41 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-27 of U.S. Patent No. 6,378,315.

Although the conflicting claims are not identical, they are not patentably distinct from each other because '315 claims refrigeration case (display case), a housing with thermal mass having thermo-physical properties similar to food product, thermistor centered in the thermal mass, a receiver with wirelessly transmit data, a receiver and a controller. The applicant places magnet or slide mount is mere matter of engineering design choice which, in absence of a statement regarding criticality or new and unexpected results, would have been an obvious choice of different mountings to place the apparatus.

8. Claims 20,22,23,24 and 37-41 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6,779,918 in view of Brown et al. (U.S. Patent Number 3,343,151) and further in view of Hamerski et al. (U.S. Patent Number 5,507,464). Although the conflicting claims are not identical, they are not patentably distinct from each other because '918 claims refrigeration case (display case), a housing with thermal mass having thermo-physical properties similar to food product, thermistor centered in the thermal mass, a receiver with wirelessly transmit data and a receiver. The applicant places magnet or slide mount is mere matter of engineering design choice. Brown et al. disclose a sensor unit 17 including a housing 18 carrying the simulator 10 with bracket mounting on the wall in the same field of endeavor for the purpose of monitoring food temperature. Brown

et al. also disclose the sensor unit can be mounted in any suitable manner. Hamerski et al. disclose the mounting mechanisms include sliding engagement, catches, magnets and suction cups. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus of Wilkinson with magnet and sliding mountings so as to substitute equivalents known for the same purpose.

*Allowable Subject Matter*

9. Claims 31-36 are allowed.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chen-Wen Jiang whose telephone number is (571) 272-4809. The examiner can normally be reached on Monday-Thursday from 8:00 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chen-Wen Jiang  
Primary Examiner

